

United States District Court  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JIAN WU,	)	Case No. 5:13-cv-00188-PSG
	)	
Plaintiff,	)	<b>FINAL JURY INSTRUCTIONS</b>
	)	
v.	)	
	)	
ENTERPRISE LEASING COMPANY OF	)	
ORLANDO LLC,	)	
	)	
Defendant.	)	

---

**1. DUTY TO DELIBERATE**

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not hesitate to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

**2. COMMUNICATION WITH COURT**

If it becomes necessary during your deliberations to communicate with me, you may send a note through Mr. Rivera, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

**3. RETURN OF VERDICT**

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise the court that you are ready to return to the courtroom.

**4. CACI 1220A: NEGLIGENCE – ESSENTIAL FACTUAL ELEMENTS**

Mr. Wu claims that he was harmed by Enterprise Leasing Company of Orlando, LLC's negligence and that it should be held responsible for that harm. To establish this claim, Mr. Wu must prove all of the following:

1. That Enterprise Leasing Company of Orlando, LLC rented the product;
2. That Enterprise Leasing Company of Orlando, LLC was negligent in inspecting the product;
3. That Mr. Wu was harmed; and
4. That Enterprise Leasing Company of Orlando, LLC's negligence was a substantial factor in causing Mr. Wu's harm.

**5. CACI 401: BASIC STANDARD OF CARE**

Negligence is the failure to use reasonable care to prevent harm to oneself or to others. A person can be negligent by acting or by failing to act. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation. You must decide how a reasonably careful rental car company would have acted in Enterprise Leasing Company of Orlando, LLC's situation. You must also decide how a reasonably careful user of a rental car would have acted in Mr. Wu's situation.

**6. CACI 1224: NEGLIGENCE – NEGLIGENCE FOR PRODUCT RENTAL /  
STANDARD OF CARE**

A person who rents products to others for money is negligent if he or she fails to use reasonable care to:

1. Inspect the products for defects;
2. Make them safe for their intended use; and
3. Adequately warn of any known dangers.

**7. CACI 430: CAUSATION: SUBSTANTIAL FACTOR**

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm. Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.



**8. CACI 431A: CAUSATION: MULTIPLE CAUSES**

A person's negligence may combine with another factor to cause harm. If you find that Enterprise Leasing Company of Orlando, LLC's negligence was a substantial factor in causing Mr. Wu's harm, then Enterprise Leasing Company of Orlando, LLC is responsible for the harm. Enterprise Leasing Company of Orlando, LLC cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing Mr. Wu's harm.

**9. CACI 1004: OBVIOUSLY UNSAFE CONDITIONS**

If an unsafe condition of a rental car is so obvious that a person could reasonably be expected to observe it, then the rental car company does not have to warn others about the dangerous condition.

**10. CACI 1222: NEGLIGENCE – RENTAL CAR COMPANY – DUTY TO WARN –  
ESSENTIAL FACTUAL ELEMENTS**

Mr. Wu also claims that Enterprise Leasing Company of Orlando, LLC was negligent by not using reasonable care to warn about the product's dangerous condition or about facts that made the product likely to be dangerous. To establish this claim, Mr. Wu must prove all of the following:

1. That Enterprise Leasing Company of Orlando, LLC rented the product;
2. That Enterprise Leasing Company of Orlando, LLC knew or reasonably should have known that the product was dangerous or was likely to be dangerous when used or misused in a reasonably foreseeable manner;
3. That Enterprise Leasing Company of Orlando, LLC knew or reasonably should have known that users would not realize the danger;
4. That Enterprise Leasing Company of Orlando, LLC failed to adequately warn of the danger of the product;
5. That a reasonable car rental company under the same or similar circumstances would have warned of the danger of the product;
6. That Mr. Wu was harmed; and
7. That Enterprise Leasing Company of Orlando, LLC's failure to warn was a substantial factor in causing Mr. Wu's harm.

**11. CACI 1620: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS –  
DIRECT VICTIM – ESSENTIAL**

Mr. Wu claims that Enterprise Leasing Company of Orlando, LLC's conduct caused him to suffer serious emotional distress. To establish this claim, Mr. Wu must prove all of the following:

1. That Enterprise Leasing Company of Orlando, LLC was negligent;
2. That Mr. Wu suffered serious emotional distress; and
3. That Enterprise Leasing Company of Orlando, LLC's negligence was a substantial factor in causing Mr. Wu's serious emotional distress.

Emotional distress includes suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame. Serious emotional distress exists if an ordinary, reasonable person would be unable to cope with it.

**12. CACI 1244: AFFIRMATIVE DEFENSE – SOPHISTICATED USER**

Enterprise Leasing Company of Orlando, LLC claims that it is not responsible for any harm to Mr. Wu based on a failure to warn because Mr. Wu is a sophisticated user of the product. To succeed on this defense, Enterprise Leasing Company of Orlando, LLC must prove that, at the time of the injury, Mr. Wu, because of his particular position, training, experience, knowledge, or skill, knew or should have known of the products risk, harm, or danger.

**13. CACI 1245A: AFFIRMATIVE DEFENSE – PRODUCT MISUSE OR MODIFICATION**

Enterprise Leasing Company of Orlando, LLC claims that it is not responsible for Mr. Wu's claimed harm because the product was misused/or modified after it left Enterprise Leasing company of Orlando, LLC's possession. To succeed on this defense, Enterprise Leasing Company of Orlando, LLC must prove that:

1. The product was misused/or modified after it left Enterprise Leasing Company of Orlando, LLC's possession; and
2. The misuse/ or modification was so highly extraordinary that it was not reasonably foreseeable to Enterprise Leasing Company of Orlando, LLC, and therefore should be considered as the sole cause of Mr. Wu's harm.

**14. CACI 3900: INTRODUCTION TO TORT DAMAGES – LIABILITY CONTESTED**

If you decide that Mr. Wu has proved his claim against defendants, you also must decide how much money will reasonably compensate Mr. Wu for the harm. This compensation is called “damages.” The amount of damages must include an award for each item of harm that was caused by Defendant’s wrongful conduct, even if the particular harm could not have been anticipated. Mr. Wu does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

**15. CACI 3902: ECONOMIC AND NONECONOMIC DAMAGES**

The damages claimed by Mr. Wu for the harm caused by defendants fall into two categories called economic damages and noneconomic damages. You will be asked on the verdict form to state the two categories of damages separately.



**16. CACI 3903: ITEMS OF ECONOMIC DAMAGE**

The following are the specific items of economic damages claimed by Mr. Wu:

- Past economic loss
- Future economic loss

**17. CACI 3903A: MEDICAL EXPENSES-PAST AND FUTURE (ECONOMIC DAMAGE)**

To recover economic damages for past medical expenses, Mr. Wu must prove the reasonable cost of reasonably necessary medical care that he has received.

To recover economic damages for future medical expenses, plaintiff must prove the reasonable cost of reasonably necessary medical care that he is reasonably certain to need in the future.

**18. CACI 3905: ITEMS OF NONECONOMIC DAMAGE**

The following are the specific items of non-economic damages claimed by Plaintiff Mr. Wu:

- Past and future physical pain
- Mental suffering
- Loss of enjoyment of life
- Disfigurement
- Physical impairment
- Inconvenience
- Grief
- Anxiety
- Humiliation
- Emotional distress

**19. CACI 3905A: PHYSICAL PAIN, MENTAL SUFFERING, AND  
EMOTIONAL DISTRESS**

No fixed standard exists for deciding the amount of these noneconomic damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense. To recover for future physical pain, mental suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation, and/or emotional distress, Mr. Wu must prove that he is reasonably certain to suffer that harm. For future physical pain, mental suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation, and/or emotional distress, determine the amount in current dollars paid at the time of judgment that will compensate Mr. Wu for these future damages. This amount of non-economic damages should not be further reduced to present cash value because that reduction should only be performed with respect to economic damages.

**20. CACI 3924: NO PUNITIVE DAMAGES**

You must not include in your award any damages to punish or make an example of defendants. Such damages would be punitive damages, and they cannot be a part of your verdict. You must award only the damages that fairly compensate Mr. Wu for his loss.

**21. CACI 3932: LIFE EXPECTANCY**

If you decide Mr. Wu has suffered damages that will continue for the rest of his life, you must determine how long he will probably live. In deciding a person's life expectancy, you should also consider, among other factors, that person's health, habits, activities, lifestyle, and occupation.

**22. CACI 3934: DAMAGES ON MULTIPLE LEGAL THEORIES**

Mr. Wu seeks damages from Defendant Enterprise Leasing Company of Orlando, LLC under more than one legal theory. However, each item of damages may be awarded only once, regardless of the number of legal theories alleged.

**23. CACI 3964: JURORS NOT TO CONSIDER ATTORNEY FEES AND COURT COSTS**

You must not consider, or include as part of any award, attorney fees or expenses that the parties incurred in bringing or defending this lawsuit.



**24. DEPOSITION IN LIEU OF LIVE TESTIMONY**

A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded. When a person is unavailable to testify at trial, the deposition of that person may be used at the trial.

You should consider deposition testimony, presented to you in court in lieu of live testimony, insofar as possible, in the same way as if the witness had been present to testify.

Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.

**25. EXPERT OPINION**

Some witnesses, because of education or experience, are permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

**26. CACI 205: FAILURE TO EXPLAIN OR DENY EVIDENCE**

If a party failed to explain or deny evidence against him/her/it when he/she/it could reasonably be expected to have done so based on what he/she/it knew, you may consider his/her/its failure to explain or deny in evaluating that evidence. It is up to you to decide the meaning and importance of the failure to explain or deny evidence against the party.

**27. EVIDENTIARY INSTRUCTION**

If you find that a party has destroyed or rendered unavailable relevant evidence, after it was on notice that such evidence may be relevant to pending or anticipated litigation, you may find that such evidence was unfavorable to that party.

**IT IS SO ORDERED.**

Dated: February 6, 2014

  
PAUL S. GREWAL  
United States Magistrate Judge

**United States District Court**  
For the Northern District of California